

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 15, 2012 appellant, then a 54-year-old human resource specialist, filed a traumatic injury claim (Form CA-1) alleging that on October 9, 2012 she sustained a trigger finger injury as a result of her repetitive employment duties of typing and forceful use of her finger and thumb. She stopped work on October 10, 2012 and returned on November 6, 2012.

In a January 3, 2013 narrative statement, appellant reported that on October 9, 2012 she was typing on her computer when her little finger locked in a bent position. Upon seeking medical treatment, appellant's physician informed appellant that she had trigger finger and required surgery. Appellant noted that trigger finger was caused by highly repetitive or forceful use of the finger and thumb. She reported that her job required typing 85 percent of the time on a day-to-day basis. Appellant explained that her physician opined that her trigger finger was caused by the required typing and repetitive movements. She further noted that her physician diagnosed a possible carpal tunnel condition. In support of her claim, appellant submitted physical therapy reports dated November 9 to 15, 2012 from Tamara Johnson.

In medical reports dated October 12, 2012 to January 11, 2013, Dr. Hamid Quraishi, a Board-certified orthopedic surgeon, diagnosed trigger finger of the right little finger. Appellant underwent surgery for trigger finger release of the right little finger on October 18, 2012.²

In a January 11, 2013 report, Dr. Arthur P. Barletta, Board-certified in physical medicine and rehabilitation, diagnosed trigger finger and referred appellant to physical therapy.

By letter dated February 6, 2013, OWCP notified appellant that her claim would be adjudicated as an occupational disease claim because it appeared that her condition was produced by continued or repeated exposure to elements of the work environment over a period longer than a single workday or shift. It further explained that the evidence of record was insufficient to support her occupational disease claim. OWCP provided appellant with a questionnaire for completion, advised of the medical and factual evidence needed, and was afforded 30 days to submit the requested information. In another letter of even date, it requested that the employing establishment provide further information pertaining to her occupational disease claim.

In a February 18, 2013 medical report, Dr. Quraishi reported that appellant's trigger finger was due to repetitive trauma. He opined that her condition was work related because her job entailed typing for 80 percent of the time and she previously had a similar problem in the right thumb for which she underwent trigger finger release.

On February 27, 2013 the employing establishment responded to OWCP's February 6, 2013 development letter, stating that appellant's employment duties required general typing (e-mails, short correspondence, and use of human resources systems, etc.) on a daily basis. The frequency varied based on the workload. It noted that appellant's work area was ergonomically configured by an occupational design specialist and her work activities and tasks were so varied

² An October 18, 2012 Southern Maryland Hospital report was submitted establishing the trigger finger release surgery.

that repetitive tasks of any duration and frequency were not a part of the normal course of duties. The employing establishment submitted an official position description for a human resources specialist.

By decision dated February 18, 2014, OWCP denied appellant's claim, finding that the evidence of record failed to establish that the occupational exposure occurred as alleged. It noted that she had failed to establish fact of injury as she had failed to respond to OWCP's questionnaire and thus, it could not determine whether any employment-related activities contributed to her condition.

On October 26, 2015 appellant requested reconsideration of OWCP's February 18, 2014 decision. She stated that, since 2012, she noticed that when typing, her fingers would stiffen, and lock up in a bent position. Appellant noted that her job consisted of typing 85 percent of the time on a day-to-day basis. She further argued that her employment duties caused her bilateral carpal tunnel syndrome. Appellant submitted a copy of her October 15, 2015 occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel syndrome as a result of her typing duties.

In support of her claim, appellant submitted a March 2, 2015 electromyography and nerve conduction velocity study from Dr. Rashid Khan, Board-certified in physical medicine and rehabilitation, which revealed abnormal findings.

In medical reports dated March 26 and September 2, 2014, Dr. Quraishi diagnosed bilateral carpal tunnel syndrome.

By decision dated November 9, 2015, OWCP denied appellant's request for reconsideration on the grounds that it was untimely filed and failed to demonstrate clear evidence of error.

LEGAL PRECEDENT

To be entitled to a merit review of OWCP's decision denying or terminating a benefit, a claimant must file her application for review within one year of the date of that decision.³ The Board has found that the imposition of the one-year limitation does not constitute an abuse of the discretionary authority granted OWCP under section 8128(a) of FECA.⁴

OWCP will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation, if the claimant's application for review shows clear evidence of error on the part of OWCP in its most recent merit decision. To establish clear evidence of error, a claimant must submit evidence relevant to the issue decided by OWCP. The evidence must be positive, precise, and explicit and it must manifest on its face that OWCP committed an error.⁵

³ 20 C.F.R. § 10.607(a).

⁴ 5 U.S.C. § 8128(a); *Leon D. Faidley, Jr.*, 41 ECAB 104, 111 (1989).

⁵ 20 C.F.R. § 10.607(b); *Fidel E. Perez*, 48 ECAB 663, 665 (1997).

To show clear evidence of error, the evidence submitted must not only be of sufficient probative value to create a conflicting medical opinion or establish a clear procedural error, but must be of sufficient probative value to shift the weight of the evidence in favor of the claimant and raise a substantial question as to the correctness of OWCP's decision.⁶

Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to establish clear evidence of error.⁷ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.⁸ This entails a limited review by OWCP of the evidence previously of record and whether the new evidence demonstrates clear error on the part of OWCP.⁹ The Board makes an independent determination as to whether a claimant has submitted clear evidence of error on the part of OWCP.¹⁰

ANALYSIS

The Board finds that this case is not in posture for a decision.

In its November 9, 2015 decision, OWCP properly found that appellant's October 26, 2015 request for reconsideration was untimely. It noted that the last merit decision was issued on February 18, 2014 and it received her request for reconsideration on October 26, 2015. As appellant's request for reconsideration was not received by OWCP within the one-year time limitation, pursuant to 20 C.F.R. § 10.607(a), her request for reconsideration was untimely. It proceeded to deny her request for reconsideration utilizing the clear evidence of error standard.¹¹

The November 9, 2015 OWCP decision found that the documentation submitted with appellant's reconsideration request did not present clear evidence of error. The Board finds, however, that OWCP did not make any findings regarding the evidence submitted in support of the reconsideration request.¹²

Section 8124(a) of FECA provides: OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.¹³ Its regulations at section 10.126 of Title 20 of the Code of Federal Regulations provide: The decision of the Director of OWCP shall contain findings of fact and a statement of reasons.¹⁴ Moreover, OWCP's procedure

⁶ *Annie L. Billingsley*, 50 ECAB 210 (1998).

⁷ *Jimmy L. Day*, 48 ECAB 652 (1997).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Cresenciano Martinez*, 51 ECAB 322 (2000); *Thankamma Mathews*, 44 ECAB 765, 770 (1993).

¹¹ *See Debra McDavid*, 57 ECAB 149 (2005).

¹² *T.M.*, Docket No. 12-1307 (issued December 12, 2012).

¹³ 5 U.S.C. § 8124(a); *see Hubert Jones, Jr.*, 57 ECAB 467 (2006); *Paul M. Colosi*, 56 ECAB 294 (2005).

¹⁴ 20 C.F.R. § 10.126. *M.L.*, Docket No. 09-956 (issued April 15, 2010); *see also O.R.*, 59 ECAB 432 (2008); *Teresa A. Ripley*, 56 ECAB 528 (2005).

manual provides: The reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.¹⁵

To determine whether appellant has established clear evidence of error, OWCP will review the evidence submitted and arguments raised in support of the request and determine whether such evidence or argument is sufficient to show error in its prior decision.¹⁶ It shall then issue a decision containing findings of fact and conclusions of law.¹⁷ In this instance, OWCP did not discuss any evidence or argument submitted in support of the reconsideration request. Its failure to provide factual findings and explain the basis for its conclusion that appellant did not demonstrate clear evidence of error precludes the Board's review of the decision.

The Board, having duly considered the matter, finds that OWCP failed to properly explain the findings with respect to the issue presented. Thus, OWCP, in its November 9, 2015 decision, did not discharge its responsibility to set forth findings of fact and a clear statement of reasons explaining the disposition so that appellant could understand the basis for the decision, *i.e.*, whether she demonstrated clear evidence that OWCP's last merit decision was incorrect.¹⁸

The Board will set aside OWCP's November 9, 2015 decision and remand the case for an appropriate final decision on appellant's untimely reconsideration request.¹⁹

CONCLUSION

The Board finds that this case is not in posture for decision.

¹⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

¹⁶ See *George C. Vernon*, 54 ECAB 313 (2003).

¹⁷ 20 C.F.R. § 10.126.

¹⁸ *J.J.*, Docket No. 11-1958 (issued June 27, 2012).

¹⁹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the November 9, 2015 decision of the Office of Workers' Compensation Programs is set aside and remanded for action consistent with this decision.

Issued: May 4, 2016
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board